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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,661	09/23/2003	Jean-Claude Yvin	16721-0250 (42528-292745)	1057
881	7590	12/11/2006	EXAMINER	
STITES & HARBISON PLLC 1199 NORTH FAIRFAX STREET SUITE 900 ALEXANDRIA, VA 22314			HENRY, MICHAEL C	
			ART UNIT	PAPER NUMBER
			1623	

DATE MAILED: 12/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/668,661

Applicant(s)

YVIN ET AL.

Examiner

Michael C. Henry

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 23-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_.

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### DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09/11/06 has been entered.

The following office action is a responsive to the amendment filed, 09/11/06.

The amendment filed 09/11/06 affects the application, 10/668,661 as follows:

1. Claims 11-22 have been canceled. New Claims 23-34 have been added. This leaves claims 23-34.

The responsive to applicants' arguments is contained herein below.

Claims 23-34 are pending in the application

#### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsuzuki et al. (Bioscience, Biotechnology, and Biochemistry, (1999 Jan) Vol. 63, No. 1, pages 104-110) in view of Chiba et al. (Pharmaceutical and Pharmacological Letters (1996), 6(1), pages 12-15).

In claim 23, applicant claims a method of promoting the regeneration of the cells in the bone marrow and the peripheral blood of a patient, said patient being subjected to a

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chemotherapeutic antineoplastic treatment comprising administration to said patient of an effective amount of an antineoplastic agent which causes an acute reduction of the said cells due to the effect of the antineoplastic agent, said method comprising administering laminarin to the patient in an amount effective to cause promotion of the regeneration of the cells, said laminarin being administered in conjunction with the administration of the antineoplastic agent. Claim 24 is drawn the method of claim 23, wherein the antineoplastic agent is cyclophosphamide. Claims 25 and 26 are drawn to said method wherein laminarin is administered by specific routes. Claims 27 and 28 are drawn to said method wherein laminarin is administered before, simultaneously with or after the antineoplastic agent or the cyclophosphamide. Claims 17-22 are drawn to said method wherein laminarin is soluble laminarin.

Tsuzuki et al. disclose a method of promoting the formation (regeneration) of blood marrow cells (hematopoiesis) of a patient (mice), said patient being subjected to a chemotherapeutic antineoplastic treatment comprising administration to said patient of an effective amount of an antineoplastic agent (cyclophosphamide) which causes an acute reduction of the said cells (leukopenia) due to the effect of the antineoplastic agent (cyclophosphamide), said method comprising administering a soluble glucan to the patient in an amount effective to cause the promotion of the formation (regeneration) of blood cells, said glucan being administered in conjunction with the administration of the antineoplastic agent (cyclophosphamide) (see abstract). Furthermore, Tsuzuki et al. disclose that the said glucan increase hematopoietic responses or exhibits hematopoietic activity (i.e. they promote the formation (regeneration) of blood cells) (see abstract). In addition, Tsuzuki et al. suggest that the

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conformation of the glucans are independent of the hematopoietic response caused by the glucans (see abstract).

The difference between applicant's claimed method and Tsuzuki et al.'s method is that Tsuzuki et al. do not use the specific glucan, laminarin.

Chiba et al. disclose that glucans including OL-2 and laminarin exhibits hematopoietic activity (i.e., they promote the formation (regeneration) of blood cells) (see abstract).

It would have been obvious to one having ordinary skill in the art, at the time the claimed invention was made, in view of Tsuzuki et al. and Chiba et al., to have used the method of Tsuzuki et al. to promote the regeneration of the cells in the bone marrow and the peripheral blood of a patient who is being subjected to a chemotherapeutic antineoplastic treatment of a antineoplastic agent such as cyclophosphamide that causes the said reduction, by administering any of the glucans such as OL-2 or laminarin which is taught by Chiba et al. to promote the formation (regeneration) of blood cells.

One having ordinary skill in the art would have been in view of Tsuzuki et al. and Chiba et al., to have used the method of Tsuzuki et al. to promote the regeneration of the cells in the bone marrow and the peripheral blood of a patient who is being subjected to a chemotherapeutic antineoplastic treatment of a antineoplastic agent such as cyclophosphamide that causes the said reduction, by administering any of the glucans such as the OL-2 or laminarin which is taught by Chiba et al. to promote the formation (regeneration) of blood cells, based on the type, and/or severity of the leukopenia caused by said treatment. It should be noted that the use of specific routes and ways of administration of said composition is common and obvious in the art, and is well within the purview of a skilled artisan.

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***Response to Amendment***

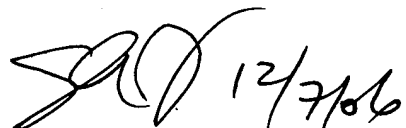
Applicant's arguments with respect to claims 23-34 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Henry whose telephone number is 571-272-0652. The examiner can normally be reached on 8.30am-5pm; Mon-Fri. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia A. Jiang can be reached on 571-272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael C. Henry

  
Shaojia Anna Jiang, Ph.D.  
Supervisory Patent Examiner  
Art Unit 1623

December 7, 2006.